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# JOEL KITCHENS

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STATE REPRESENTATIVE • 1<sup>ST</sup> ASSEMBLY DISTRICT

## **Testimony for the Assembly Committee on Campaigns and Elections 411 South October 31, 2023**

Thank you, Chairman Krug and Committee Members.

Every session, we work on bills to protect people from being exploited financially. Those protections should also extend to our elections. Right now, state law is incomplete when someone loses their right to vote from a court ruling of incompetence. That needs to change for the protection of our vulnerable citizens and for the integrity of our elections.

In our state, when a judge makes the difficult decision to remove someone's voting rights because of incompetency, often two key people who need to deal with the ruling are not informed. The person who is ruled incompetent and the local clerks who have to enforce the decision.

This confusion led to many people voting who lost that right because of a court ruling. A review by Dane County election officials found nearly 100 people who cast more than 300 ballots since 2008 despite being declared incompetent to vote. Many of those people voted in multiple elections.

In more than half of those cases, the voter was registered under a different address than the one listed in the state's adjudicated incompetent list. It's highly unlikely a clerk would turn someone away if they were able to provide proof of their residency. I introduced Assembly Bill 572 after those concerns were raised to me by my clerks.

State law isn't clear on how people need protection and clarity on their voting rights. Often people declared incompetent don't even know they aren't allowed to vote because they weren't given a copy of the ruling. Our law also doesn't have a process for notifying clerks when someone is declared incompetent to vote.

While current law already requires municipal clerks to post a notice at the home or facility and on the Internet indicating the date and time that absentee voting will take place at that home or facility, there is no notification process for the individuals or individuals whom the resident has designated as authorized contact persons.

The bill includes a safeguard for families of individuals who were declared incompetent by requiring nursing homes to email the designated contact for a resident when special voting deputies will be in the facility.

AB 572 also requires the courts to contact the Wisconsin Elections Commission (WEC) within two days of a declaration of incompetence to declare that voter ineligible. The courts must also provide a copy of the determination of incompetency to the person and their guardian.

Many times, people are declared incompetent before they turn 18. The bill also requires WEC to create a voter file if none exists, so that the voter may be marked as ineligible. Under the bill, the clerk must examine the registration list before issuing a ballot to any potential voter. To address privacy concerns, an incompetent voter will only be marked as "ineligible" on the list.

WEC will also add being adjudicated incompetent to the list of reasons a voter is not allowed to vote on the registration form. However, incompetent voters may NOT be prosecuted for trying to vote.

AB 572 also provides that if a court restores the voter's right to vote. WEC must, within two business days, notify the voter that the voter is eligible to vote and that the voter is required to complete a new registration to vote if the voter intends to vote.

I believe AB 572 will improve the difficult process of declaring someone incompetent, make sure they and their guardian know their rights, give clerks the information they need to enforce court orders, and make sure family members are looped in when voting happens in a care facility.

Thank you for your time and I hope you consider supporting Assembly Bill 572. I am happy to answer any questions you might have.



October 31, 2023

Assembly Committee on Campaigns and Elections  
Representative Krug, Chair  
State Capitol, Room 223 North  
Madison, WI 53708

Dear Rep. Krug and members of the committee:

The Wisconsin Board for People with Disabilities (BPDD) appreciates the opportunity to testify on AB 572.

BPDD supports the changes in Section 1 of the bill, which notifies the Wisconsin Election Commission in the event an individual's right to vote has been removed or restored by the court under the proceedings outlined in Wis. Stats. Ch. 54.

Wisconsin has a limited guardianship system, which means when petitioned to consider whether an individual is legally competent to exercise certain civil rights, the court decides whether the prospective ward loses or retains certain rights. The right to vote is among many civil rights that may be removed or retained by the person, and the right to vote may be restored by the court.

Section 1 is an effective remedy that addresses the need for an accurate record of eligible voters, while also honoring the confidentiality requirements for guardianship cases under Wis. Stats. 54.75. The bill recognizes that rights may be lost or restored and adjusts the list based on the court's action.

We appreciate the bill will exempt people who have lost their right to vote through guardianship proceedings from Class 1 felony charges if they vote in an election after losing their right to vote. Based on the experience of individuals and families across the state, many petitioners are not fully aware of which rights they are petitioning to remove when engaging with the court and many wards are not aware of what rights they have lost.

In Wisconsin, individuals are eligible to vote if they are:

- Over age 18
- Have been a resident of Wisconsin at a specific address for the time period specified by statute.
- Have Photo ID that conforms with statutory requirements.
- Are a U.S. Citizen
- Have not lost the right to vote through felony conviction or guardianship proceeding



Greater Wisconsin  
Agency on Aging Resources, Inc.

Date: October 31, 2023

To: Chair Krug and members of the Assembly Committee on Campaigns and Elections

From: Janet L. Zander, Advocacy & Public Policy Coordinator

Re: **AB 572** relating to: absentee voting in certain residential care facilities and retirement homes and court determinations of incompetency and ineligibility to vote

Thank you for this opportunity to share testimony on AB 572. According to the Wisconsin Elections Commission's Voter Registration Statistics (October 2023), over 1.9 million Wisconsinites ages 50 and older are registered electors.<sup>1</sup> Voting is a high priority for many older adults. Despite a strong desire to vote, as people age, there are often barriers standing between their desire to vote and being able to vote.

Nationally about 1 in 6 people are age 65 and over, while Wisconsin's 65 and older population represents 1 in 5 people (20%). Over 1.1 million Wisconsinites are age 65 and older and nearly 40% (almost 450,000) of the older population is age 75 and older and almost 12% are age 85 and older.<sup>2</sup> According to research conducted by the National Council on Aging (NCOA), 94.9% percent of adults age 60 and older have at least one chronic health condition, while 78.7% have two or more.<sup>3</sup> In 2023, Over 17,000 people currently reside in certified Wisconsin nursing facilities.<sup>4</sup>

### **AB 572**

#### Section 1:

The Greater Wisconsin Agency on Aging Resources, Inc. (GWAAR) supports changes in Section 1 of the bill requiring the Wisconsin Election Commission to, **upon receipt of a determination of ineligibility to register to vote** or to vote under s. 54.25 (2) (c) 1. g. or **restoration of an elector's right to vote**, no later than 2 business days after receiving the

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<sup>1</sup> Wisconsin Elections Commission (Oct. 2, 2023). October 1, 2023 Voter Registration Statistics. Retrieved on October 30, 2023 from <https://elections.wi.gov/resources/statistics/october-1-2023-voter-registration-statistics>.

<sup>2</sup> Health Compass Milwaukee. Age Data for State: Wisconsin. Retrieved on October 30, 2023 from [https://www.healthcompassmilwaukee.org/demographicdata?id=52&sectionId=942#sectionPiece\\_207](https://www.healthcompassmilwaukee.org/demographicdata?id=52&sectionId=942#sectionPiece_207)

<sup>3</sup> National Council on Aging. Chronic Inequities: Measuring Disease Cost Burden Among Older Adults in the U.S. A Health and Retirement Study Analysis. Page 5, Figure 2. April 2022. Retrieved on October 30 2023 <https://ncoa.org/article/the-inequities-in-the-cost-of-chronic-disease-why-it-matters-for-older-adults>.

<sup>4</sup> KFF. Total Number of Residents in Certified Nursing Facilities. Retrieved on October 30, 2023 from <https://www.kff.org/other/state-indicator/number-of-nursing-facility-residents/?activeTab=graph&currentTimeframe=0&startTimeframe=8&selectedRows=%7B%22states%22:%7B%22wisconsin%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

person has been adjudicated incompetent in this state. If a determination of incompetency of the person has already been made, or if a determination of limited incompetency has been made that does not include a specific finding that the subject is competent to exercise the right to vote, and a guardian has been appointed as a result of any such determination, then no determination of incapacity of understanding the objective of the elective process is required unless the guardianship is terminated or modified under s. 54.64.

It is essential for the summary to include section 3, as poll workers are not permitted to reject any attempt to vote based solely upon their *belief* that the voter does not understand the objective of the elective process, in the absence of a court determination indicating the person has been determined to be incompetent to exercise the right to vote.

The Greater Wisconsin Agency on Aging Resources, Inc. (GWAAR) is a nonprofit agency committed to supporting the successful delivery of aging programs and services in our service area consisting of 70 counties (all but Dane and Milwaukee) and 11 tribes in Wisconsin. We are one of three Area Agencies on Aging in Wisconsin. Our mission is to deliver innovative support to lead aging agencies as we work together to promote, protect, and enhance the well-being of older people in Wisconsin. There are over one million adults ages 60 and older residing in our service area.

Thank you for your consideration of our testimony regarding AB 572. GWAAR supports voting processes that ensure every eligible older adult who wants to vote, can vote, no matter where they live or the means by which they choose to vote. We appreciate the interest in and efforts of policy makers to preserve, protect, and enhance the voting rights of older adults and people with disabilities. We look forward to continuing to work with you on policies that improve the quality of life of older people in Wisconsin.

Working together to promote, protect, and enhance  
the well-being of older people in Wisconsin.

Contact:  
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**Testimony on AB-572**  
**Tuesday, October 31, 2023**  
**Former Senator, Kathy Bernier**

Chairman Krug and Committee members, it is an honor to testify before you today.

For those of you who do know me and my background, I worked at the polls in the town of Anson in the late 1980s. I served as the Chippewa County Clerk from 1999-2011. I helped train 150 clerks and poll workers in each election cycle for a dozen years. I served in the State Assembly and the State Senate, where I sat or chaired the Election Committees for 12 years. I served on the Election Committee with the National Conference of State Legislatures, and on the United States Election Assistance Commission, Board of Advisors.

I authored the Special Voting Deputy law as we know it. My office staff and Mary Ann Hanson from Waukesha, worked for months to craft an appropriate legal protection for individuals who live in nursing homes and assisted living facilities. Not because we wanted to hinder their votes, but to assist them in casting their ballot, legally, and as privately as possible. In addition, to aid individuals with physical disabilities in casting their ballot with trained personnel who have taken an oath and are bipartisan. Abusing the elderly and disabled persons votes is not a new allegation.

Currently, long term facilities “may” inform a relative when voting will occur in the facility, only if asked. Depending on the time of year, a family member may not even be thinking about this option, unless it is brought to their attention. This bill merely requires the facility administrator to bring this to the attention of the resident’s relative when there is an upcoming election. I am sure, if you have a family member that needs assistance, there is a lot on your mind, not just how your loved one is going to cast their ballot.

The other, long overdue, consideration is the competency process. Competency determinations for voting purposes have been vague and inconsistent forever. I didn’t even realize this until I had a conversation with the Executive Director of Wisconsin Election Commission recently.

Wisconsin has a statewide voter registration system that is connected to the DOC, DOT and State Vital Records and yet, we haven’t provided for a clear record keeping process for competency documentation for voting purposes. This bill provides that process and direction.

I received a phone call from the Trempealeau County Clerk, telling me we had a voter who voted in Whitehall and the Town of Wheaton, Chippewa County. The Trempealeau County Clerk questioned “Mable’s” (real name withheld) ability to understand the electoral process in the first place. I referred the elderly woman’s name and Chippewa County address to the District

Attorney. An investigation was conducted, where the daughter was involved in the situation. So, maybe she didn't know her mother already voted. The provisions in the this bill should help with this misunderstanding.

Unfortunately, the victim was also the law breaker, even though she had no idea she voted twice. For this reason, the portion of the bill that does not require a class I felony makes perfect sense. By the way, the Chippewa County District Attorney saw no need to prosecute Mable.

The bottom line is this...we need a process to follow, to inform family when elections are going to be held in their family members facility. As much as we respect and appreciate personal care givers, it doesn't hurt to protect the vulnerable and that includes their vote.

It is important to have a clear notification process once an incompetency determination has been made. The voter rolls should reflect that incompetency determination, so there is no misunderstanding deliberate or indeliberate.

Thank you for your time, I am happy to answer any questions.